

## REMARKS

Claims 6-13, 15-18, 20, and 25-30 are pending. Claims 6, 25, and 28 are currently amended. Claims 1-5, 14, 19, and 21-24 were previously cancelled without prejudice. No new matter has been added.

Claim 6 is amended to more particularly point out that the outer stem has a “bore,” wherein the rod is “at least partially disposed in the bore.”

Claim 25 is amended to more particularly point out that the axis of rotation is “disposed outside of the outer stem.”

Claim 28 is amended to more particularly point out that the outer stem has an “exterior surface,” wherein the drill guiding barrel is “pivotably attached to the outer stem at the exterior surface.”

Support for these amendments appears, *inter alia*, at pages 7-9 and Figs. 9-10 of the specification as-filed. No new matter has been added by these amendments.

### ***Rejections under 35 U.S.C. § 102(b)***

Claims 6-13, 18, 20, and 25-30 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,755,721 to Hearn (“Hearn”). These rejections should be withdrawn.

Hearn discloses a drill guide 1 having a sleeve 10 having an integral knurled flange 11, and receiving a tube 30 therein. Removable cover 60 is positioned over drill guide 1 (to envelop sleeve 10) when the device is inserted into the body, to displace soft tissue and expose bone.

Regarding independent claim 6, Hearn does not disclose an outer stem having a bore, and a rod “at least partially disposed in the bore.” Assuming *arguendo* that removable cover 60 can be considered a “rod,” cover 60 is not disposed within a bore of sleeve 10. Instead, cover 60 “is sized to envelope the sleeve 10,” and may be attached to the sleeve 10 by exterior threading on the sleeve 10. (*See* Hearn at 4:54-61). Moreover, it is clear from Figure 1 of Hearn that the removable cover 60 fits *over* sleeve 10 — not within a bore in sleeve 10. Thus, Hearn does not disclose a rod at least partially disposed in a bore of an outer stem.

Regarding independent claim 25, Hearn does not disclose a drill guiding barrel having an “axis of rotation disposed outside of the outer stem.” Assuming *arguendo* that tube 30 is “pivotable” relative to sleeve 10, the axis of rotation of tube 30 passes *through* the interior of sleeve 10 — not outside of sleeve 10. In fact, the axis of rotation of tube 30 passes

through tube 30 itself, as tube 30 can only rotate within sleeve 10, thus creating an axis of rotation substantially collinear with the longitudinal axis of both sleeve 10 and tube 30. Clearly, the axis of rotation of tube 30 is not “disposed outside” of sleeve 10. Thus, Hearn does not disclose a drill guiding barrel having an “axis of rotation disposed outside of the outer stem.”

Regarding independent claim 28, Hearn does not disclose a drill guiding barrel is “pivotably attached to the outer stem at [its] exterior surface.” Assuming *arguendo* that tube 30 is “pivotably attached” to sleeve 10, tube 30 rotates *within* sleeve 10, and therefore can only be “pivotably attached” to sleeve 10 at an interior surface. (*Compare with* Figures 9-10 of the present application). Thus, Hearn does not disclose a drill guiding barrel is “pivotably attached to the outer stem at [its] exterior surface.”

As Hearn fails to disclose each and every element of independent claims 6, 25, and 28, Applicants submit these rejections should be withdrawn. Moreover as dependent claims 7-13, 18, and 20 depend from independent claim 6, dependent claims 26 and 27 depend from independent claim 25, and dependent claims 29 and 30 depend from independent claim 28, the rejections of these claims should likewise be withdrawn, for at least this reason.

#### ***Rejections under 35 U.S.C. § 103(a)***

Claims 15-17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Hearn in view of U.S. Patent No. 6,447,512 to Landry (“Landry”). Claims 15-17 depend from independent claim 6. As discussed above, Hearn fails to disclose each and every element of claim 6. Landry fails to remedy the deficiencies of Hearn. Thus, Applicants submit the rejections of claims 15-17 should be withdrawn.

**CONCLUSION**

It is believed that claims 6-13, 15-18, 20, and 25-30 are in condition for allowance.

No fee is believe due for this response. Should any fee(s) be due at this time, please charge such fee(s) to Jones Day Account No. 503013.

Respectfully submitted,

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